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POLICE POWER; SCHOOLS FOR WHITE AND COLORED PERSONS.

Following the Civil war it was generally thought that the solving of the negro question lay in the association of the colored people with the whites. A decade, however, has wrought a change in this view; public opinion, especially in the southern states, has discarded the association idea and the separation of the races is now considered the proper solution of this vexed problem. Whether this swinging of the pendulum indicates an advancement or a retrogression remains to be seen. That the advocates of separation, of segregation, almost, are sincere is unquestioned, but sincerity in advocating a cause has never been any guarantee of its wisdom. True it is, every patriot is sincere; so too is every demagogue.

This theory of separation has been carried to great lengths in Kentucky. An act was passed by the legislation of that state in 1904 which made it unlawful "for any person, corporation or association of persons to maintain or operate any college school, or institution, where persons of the white and negro races are both received as pupils for instruction." For violation of this act a fine of $1,000 was imposed. This statute has recently been sustained by the Court of Appeals of Kentucky, in *Berea College v. Commonwealth,* 94 S. W. 623. Such an act was the valid exercise of the police power of

the state, it was said, and not in violation of the fourteenth amendment of the constitution of the United States.

Reduced to a single, simple proposition the court decided that "it was a fair exercise of the police power to restrain the two races from voluntarily associating together in a private school to acquire a scholastic education." Hitherto the police power of the states has only been directed to three phases of the relations between colored and white persons, viz.: (1) Intermarriage; (2) Public Conveyances; (3) Public Schools. The grounds upon which the state bases its right to prohibit intermarriage are obvious; the identity and characteristics of each race could be preserved in no other way. *Ex parte Hobbs,* 1 Woods (U. S.) 537 Gen. O. Cas. No. 6-550. Statutes separating the races in public conveyances and public schools are defended and sustained by the courts because in both instances colored and white persons are forced to associate with one another. Necessity brings them in contact on railroads; compulsory attendance statutes, in public schools. To avoid racial clashes arising from such enforced association, the courts have repeatedly upheld regulations for separate railroad cars and separate public schools; *Westchester & Phil. R. R. Co. v. Miles,* 55 Pa. 209; *Asco. v. School Board,* 161 N. Y. 598.

The present case however is beyond the reasoning of the above decisions. If white and colored persons desire to receive instruction at the same private institution, and teachers are willing to instruct both races, upon what ground can the state prevent this association? Upon what ground should instructors be fined for voluntarily teaching white and colored pupils who voluntarily come together for instruction? Is the legitimate tendency of such voluntary association to "destroy the identity and purity of the races?" Does such intermingling logically result in "clashes between the races?" And yet it is upon these two reasons that the court bases its entire decision.

If a state has the power to fine an instructor for teaching negroes and white persons together, it is respectfully submitted that it also has the power to fine any lecturer who addresses an audience composed of both races, whether that lecturer be connected with a college or hire a hall to address any who may choose to hear. If it is made a misdemeanor to teach white and colored persons together, he who throws open his store to both races equally, should be punished; an innkeeper should be penalized for holding out accommodations to all—wherein lies the distinction?

As a result of the enforcement of this statute an institution,

which for fifty years has held its doors open to all, whose purpose in teaching, as expressed in its charter, was "for promoting the cause of Christ," now stands guilty under an indictment. The Court of Appeals of Kentucky considered this separation statute as only a *fair* exercise of the police power by the legislature.

Whether its decision would have been the same had the police power been exercised in reference to any subject except the relation between the colored and white races, is an entirely different question. This power of police is an expansive power and circumstances often alter cases.

THE RIGHTS OF A PASSENGER PRESENTING A WRONG TRANSFER.

This question has usually arisen when the conductor has attempted to eject the passenger presenting such defective transfer, and the late case of *Norton v. Consolidated R. Co.*, 79 Conn. 109, is no exception.There the plaintiff boarded a car, paid his fare, and asked for a transfer. Through the negligence of the conductor this transfer was wrongly punched and the conductor of the second car attempted to eject him, but finally desisted. The action was brought for damages for the alleged assault.

The particular point involved turns on the question of the conclusiveness of the transfer. In deciding whether or not the transfer is conclusive on the passenger, the various courts of appeal, before whom the problem has arisen, have reached exactly opposite conclusions.

In the case of *Indianapolis St. R. Co. v. Wilson,* 66 N. E. 950, recently decided, the court adopts the view that the ticket is not conclusive evidence of the contract of passage. Jordan, J., says: "The ticket is only evidence of the contract, and if it fails to disclose the true contract its infirmity or fault in this respect must be chargeable to the carrier, and the latter is liable for the natural consequences. . . . Inasmuch as the passenger is not permitted to have anything to do with the preparation of the ticket, the passenger has a right to presume that the ticket furnished him is a correct expression of the contract between himself and the carrier." The plaintiff, therefore, was given damages for the assault. The court cited, in support of this view, *Trice v. Chesapeake, etc., R. R. Co.*, 40 W. Va. 271; *Ellsworth v. Chicago R. Co.*, 95 Iowa 98.

The opposite result, however, was reached in *Bradshaw v. R. R. Co.*, 135 Mass. 407, where the court said the rule of the company requiring the passenger to have a proper ticket was a reasonable one, and the right of the passenger to transportation is no greater than